

JAMES PATRICK SHEA, ESQ.  
Nevada Bar No. 405  
ARMSTRONG TEASDALE LLP  
3770 Howard Hughes Parkway, Suite 200  
Las Vegas, Nevada 89169  
Telephone: 702.678.5070  
Facsimile: 702.878.9995  
Email: jshea@armstrongteasdale.com

DAVID MARDER, ESQ.  
Massachusetts Bar No. 552485 (*pro hac vice*)  
SHERLI FURST, ESQ.  
New York Bar No. 4783577 (*pro hac vice*)  
MICHAEL A. KOLCUN, ESQ.  
New York Bar No. 5054127 (*pro hac vice*)  
ROBINS KAPLAN LLP  
399 Park Avenue, Suite 3600  
New York, New York 10022-4611  
Telephone: (212) 980-7400  
Facsimile: (212) 980-7499  
Email: DMarder@RobinsKaplan.com  
SFurst@RobinsKaplan.com  
MKolcun@RobinsKaplan.com

*Counsel for Plaintiff Sonoro Invest S.A.*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

SONORO INVEST S.A., a Panamanian  
corporation,

Plaintiff,

v.

ROBERT MILLER, an individual; ANDREW  
SHERMAN, an individual; COSTAS TAKKAS, an  
individual; and STEPHEN GOSS, an individual,

Defendants,

and

ABAKAN, INC., a Nevada corporation,

Nominal Defendant.

Case No. 2:15-cv-2286

**ORDER**  
**PRELIMINARILY APPROVING**  
**SETTLEMENT AND PROVIDING FOR**  
**NOTICE**

ECF No. 148

WHEREAS, Plaintiff in the above-captioned shareholder derivative action has made an unopposed application pursuant to Fed.R.Civ.P. 23.1(c) for an order: (i) preliminarily approving a settlement of this action in accordance with the Settlement Agreement dated August 10, 2017, which

1 sets forth the terms and conditions for the proposed settlement and dismissal of this action with  
2 prejudice, and (ii) approving the form and content of the Notice to be sent to current Abakan  
3 shareholders directly via first-class mail;

4 WHEREAS, all capitalized terms contained herein shall have the same meanings as set forth  
5 in the Settlement Agreement (in addition to the capitalized terms therein); and

6 WHEREAS, the Court has reviewed and considered the Settlement Agreement;

7 NOW, THEREFORE, IT IS HEREBY ORDERED:

8 1. The Court does hereby preliminarily approve, subject to further consideration at the  
9 Settlement Hearing described below, the Settlement Agreement annexed as Exhibit A to Plaintiff's  
10 unopposed motion, including the terms and conditions for the settlement and dismissal with prejudice  
11 of this action.

12 2. A hearing ("Settlement Hearing") shall be held before this Court on  
13 Dec. 14, 2017, at 9 a.m. to determine: (i) whether the terms and conditions of  
14 the Settlement Agreement are fair, reasonable, and adequate to current Abakan shareholders,  
15 (ii) whether a final order and judgment approving the Settlement Agreement should be entered, and  
16 (iii) whether the reimbursement of the requested attorneys' fees and costs to Plaintiff's counsel  
17 should be finally approved.

18 3. The Court approves, as to form and content, the Notice annexed as Exhibit B to  
19 Plaintiff's unopposed motion, and finds that the distribution of such notice substantially in the form  
20 set forth in this Order meets the requirements of Fed.R.Civ.P. 23.1 and due process, and is the best  
21 notice practicable under the circumstances and shall constitute due and sufficient notice to all persons  
22 entitled thereto.

23 4. Within ten (10) days of the Court's entry of this Order, Abakan shall cause the Notice  
24 to be sent to current Abakan shareholders directly via first-class mail, the cost of which shall be  
25 borne by Abakan's insurance carrier.

26 5. All papers in support of final approval of the settlement shall be filed with the Court at  
27 least thirty (30) days prior to the Settlement Hearing, and any reply papers shall be filed with the  
28 Court at least seven (7) days prior to the Settlement Hearing.

1           6. Any current Abakan shareholder may object and/or appear and show cause, if such  
2 shareholder has any concern why the proposed settlement should not be approved as fair, reasonable,  
3 and adequate, or why a final order and judgment should not be entered thereon, or why the  
4 reimbursement of the requested attorneys' fees and costs to Plaintiff's counsel should not be finally  
5 approved; provided, however, unless otherwise ordered by the Court, no current Abakan shareholder  
6 shall be heard or entitled to contest the approval of the terms and conditions of the settlement, or if  
7 approved, a final order and judgment to be entered thereon approving the same, or the fee award,  
8 unless that shareholder has, at least fourteen (14) days prior to the Settlement Hearing: (i) filed with  
9 the Clerk of Court a written objection to the settlement setting forth (a) the nature of the objection,  
10 (b) proof of ownership of Abakan stock through the date of the Settlement Hearing, including the  
11 number of Abakan shares and the date of purchase, (c) any documentation in support of such  
12 objection, and (ii) if a current Abakan shareholder intends to appear and requests to be heard at the  
13 Settlement Hearing, such shareholder must have, in addition to the foregoing requirements, filed with  
14 the Clerk of Court (a) a written notice of such shareholder's intention to appear, (b) a statement that  
15 indicates the basis for such appearance, and (c) the identities of any witnesses the shareholder intends  
16 to call at the Settlement Hearing and a statement as to the subjects of their testimony. If a current  
17 Abakan shareholder files a written objection and/or written notice of intent to appear, such  
18 shareholder must also simultaneously serve copies of such notice, proof, statement, and  
19 documentation, together with copies of any other papers or briefs such shareholder files with the  
20 Court, either by hand delivery or first class mail on each of the following counsel of record:

21 David Marder, Esq.  
22 Sherli Furst, Esq.  
23 Michael A. Kolcun, Esq.  
24 ROBINS KAPLAN LLP  
399 Park Avenue, Suite 3600  
New York, New York 10022-4611

Christina C. Tizzano, Esq.  
The Chilcote Law Firm LLP  
The Cedar-Grandview Building  
12434 Cedar Road, Suite Number 3  
Cleveland Heights, Ohio 44106

25 James Patrick Shea, Esq.  
26 Armstrong Teasdale LLP  
3770 Howard Hughes Parkway, Suite 200  
27 Las Vegas, NV 89169  
28 *Counsel for Plaintiff Sonoro Invest S.A.*

Patrick J. Reilly, Esq.  
Andrea M. Champion, Esq.  
Holland & Hart LLP  
9555 Hillwood Drive, Second Floor  
Las Vegas, Nevada 89134  
*Attorneys for Defendant Andrew J. Sherman*

1 Adam Jacob Yormack, Esq.  
2 Yormack, PA  
3 2525 Ponce De Leon, Suite 300  
4 Coral Gables, FL 33134

5 Kirill Mikhaylov, Esq.  
6 Hall Prangle & Schoonveld LLC  
7 1160 N Town Center Dr Ste 200  
8 Las Vegas, NV 89144  
9 *Attorneys for Defendant Robert Miller*

10 Benjamin Calkins, Esq.  
11 Thomas L. Anastos  
12 The Calkins Law Firm, Ltd.  
13 100 North Main Street, Suite 235  
14 Chagrin Falls, OH 44022

15 Craig A. Newby, Esq.  
16 McDonald Carano Wilson LLP  
17 2300 W Sahara Avenue, Suite 1200  
18 Las Vegas, NV 89102  
19 *Attorneys for Defendant Stephen Goss*

Mark D. Hunter, Esq.  
Hunter Taubman Fischer LLC  
255 University Dr  
Coral Gables, FL 33134

Maximiliano D. Couvillier , III, Esq.  
Black & LoBello  
10777 West Twain Ave., Ste. 300  
Las Vegas, NV 89135  
*Attorneys for Defendant Costas Takkas*

20 Any current Abakan shareholder who does not make their objection in the manner provided  
21 herein shall be deemed to have waived such objection and shall forever be foreclosed from making  
22 any objection to the fairness, reasonableness, or adequacy of the settlement as incorporated in the  
23 Settlement Agreement, unless otherwise ordered by the Court, and shall otherwise be bound by the  
24 final order and judgment to be entered and the releases to be given.

25 7. All current Abakan shareholders shall be bound by all orders, determinations, and  
26 judgments in the action concerning the settlement.

27 8. The Court reserves the right to adjourn the date of the Settlement Hearing or modify  
28 any other dates set forth herein without further notice to current Abakan shareholders, and retains  
jurisdiction to consider all further applications arising out of or in connection with the settlement.  
The Court may approve the settlement and any of its terms, with such modifications as may be  
agreed to by the Parties, if appropriate, without further notice to current Abakan shareholders.

9. In accordance with the prior Order on Stipulation (ECF No. 147), the Court hereby  
extends the stay of this action, including all deadlines and discovery, until such time as the Court

1 enters an order on Plaintiff's motion for final approval of the settlement. In the event the Court  
2 denies Plaintiff's motion for final approval of the settlement, the parties will jointly seek the entry of  
3 a new scheduling order, if necessary.

4  
5 IT IS SO ORDERED:

6 UNITED STATES DISTRICT JUDGE

7  
8 DATED:  \_\_\_\_\_

9 Oct. 2, 2017.